

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Accessibility of User Interfaces, and Video
Programming Guides and Menus
MB Docket No. 12-108

MEMORANDUM OPINION AND ORDER

Adopted: April 30, 2018

Released: April 30, 2018

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address whether it is achievable for Honda Motor Co., Ltd. (Honda) to comply with the Federal Communications Commission's rules requiring the accessibility of user interfaces on covered digital apparatus for certain Honda vehicles.

II. BACKGROUND

2. In 2013, the Commission adopted rules pursuant to Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to make user interfaces and video programming guides and menus accessible on televisions, set-top boxes, and other devices used to

1 Covered digital apparatus are those that are manufactured in or imported for use in the United States and designed to receive or play back video programming transmitted in digital format simultaneously with sound, excluding navigation devices. See 47 U.S.C. § 303(aa)(1); 47 CFR § 79.107(a)(1).

2 The current generation of Acura MDX vehicles spans from Model Years 2014 to 2020, and Honda indicates that October 2020 is the final date of manufacture for this generation of MDX vehicles. See Honda Motor Co., Ltd. Response to Commission Investigation Letter Dated November 28, 2017, at 14 (Jan. 29, 2018) (Honda LOI Response). Although Honda initially sought a 20-month waiver for 2017 through 2019 Model Year Acura MDXs, anticipating that it would be able to meet the requirements by August 2018, it now indicates that it is not achievable for them to comply with the accessible user interfaces rules for 2017 through 2020 Model Year Acura MDXs. See id. at 14-15.

3 Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.). See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

view video programming.⁴ Manufacturers of covered digital apparatus⁵ are responsible for compliance with accessible user interfaces rules for devices manufactured after December 20, 2016, subject to certain exceptions.⁶ Section 79.107 of the Commission's rules requires that such apparatus be designed, developed, and fabricated so that control of appropriate built-in functions (*i.e.*, those functions used for the reception, play back, or display of video programming)⁷ included in the apparatus are accessible to and usable by individuals who are blind or visually impaired, if achievable.⁸ In addition, Section 79.109 requires that digital apparatus with built-in closed captioning and/or video description capability include a mechanism that is reasonably comparable to a button, key, or icon for activating the closed captioning and video description.⁹

3. As prescribed by the CVAA, the Commission adopted rules for achievability under Section 79.107 consistent with Section 716 of the Communications Act of 1934, as amended (the Act).¹⁰ Specifically, Section 79.107(c) of the Commission's rules defines "achievable" as "with reasonable effort or expense" and specifies that the Commission will consider the following factors when determining whether compliance with the requirements of this section is not "achievable":

- (i) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question;
- (ii) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;
- (iii) The type of operations of the manufacturer or provider; and
- (iv) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.¹¹

The rule further specifies that a manufacturer of digital apparatus may file a petition seeking a determination from the Commission that compliance with the requirements of Section 79.107 is not achievable before manufacturing the product, which the Commission may grant upon a finding that such

⁴ 47 CFR §§ 79.108-79.110. *See Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330 (2013) (*Accessible User Interfaces Order*).

⁵ *See supra* note 1. The term "digital apparatus" includes the physical device and the video player(s) capable of displaying video programming transmitted in digital format simultaneously with sound that manufacturers install into the devices they manufacture before sale or direct consumers to install after sale, whether in the form of hardware, software, or a combination of both. *See* Note 1 to 47 CFR § 79.107(a)(1).

⁶ *See* 47 CFR §§ 79.107(b), 79.109(c); *Accessible User Interfaces Order*, 28 FCC Rcd at 17353-54, paras. 38-39.

⁷ This includes the following functions: Power On/Off; Volume Adjust and Mute; Channel/Program Selection; Display Channel/Program Information; Configuration – Setup; Configuration – CC Control; Configuration – CC Options; Configuration – Video Description Control; Display Configuration Info; Playback Functions; and Input Selection. 47 CFR § 79.107(a)(4); *Accessible User Interfaces Order*, 28 FCC Rcd at 17367-68, para. 58.

⁸ 47 CFR § 79.107(a)(1)-(4).

⁹ *Id.* § 79.109(a)(1)-(2).

¹⁰ *See* 47 U.S.C. § 617(g).

¹¹ 47 CFR § 79.107(c)(2). *See also Accessible User Interfaces Order*, 28 FCC Rcd at 17379, para. 77.

compliance is not achievable.¹² Alternatively, a manufacturer may raise as a defense to a complaint or Commission enforcement action that a particular digital apparatus does not comply with the requirements of this section because compliance was not achievable.¹³ The achievability provision is applicable to the accessible user interfaces requirements in Section 79.107, but is not applicable to the requirements in Section 79.109.¹⁴ Waivers of Section 79.109 are evaluated under the general waiver authority in Section 1.3 of the Commission's rules.¹⁵

4. In March 2017, the Media Bureau (Bureau) found good cause, pursuant to Section 1.3 of the Commission's rules, to grant a temporary waiver of the accessible user interfaces requirements to give Honda time to develop and integrate accessible technology for rear entertainment systems on the 2017 through 2019 Model Year Honda Odyssey, Honda Pilot, and Acura MDX.¹⁶ In its petition requesting a waiver, Honda contended that it was not aware of the impact of the Commission's accessibility requirements on automobile manufacturers until shortly before the December 2016 compliance deadline, but began steps to integrate accessibility features into rear entertainment systems after learning of the requirements.¹⁷ At that time, Honda indicated that it would need to redesign operating system electronics for the rear entertainment systems to achieve the accessibility required by the user interfaces rules, and it set forth a detailed plan for implementing the required accessibility within 20 months, accounting for the time needed to undertake hardware design investigation, ordering component parts and related assembly, testing, and software development.¹⁸

5. In granting a 20-month waiver to Honda, the Bureau explained that "there are compelling special circumstances in the context of this specific waiver request that warrant a deviation from the general rule."¹⁹ In particular, the Bureau noted that "this is a limited waiver granted to an automobile manufacturer not traditionally subject to FCC regulation that will bring a narrow category of devices into compliance with accessibility rules."²⁰ The Bureau further observed that, in the absence of a waiver, Honda would need to suspend production and sales of its vehicles to undertake the necessary hardware and software changes for its rear entertainment systems, or, alternatively, cease offering rear entertainment systems on Honda vehicles—approaches which would both be contrary to the public

¹² 47 CFR § 79.107(c)(1). See also *Accessible User Interfaces Order*, 28 FCC Rcd at 17379, para. 78.

¹³ *Id.*

¹⁴ Section 303(aa)(1) of the Act indicates that apparatus covered by Section 204 are required to make appropriate built-in apparatus functions accessible to and usable by individuals who are blind or visually impaired only "if achievable (as defined in section 716)." See 47 U.S.C. § 303(aa)(1). In the *Accessible User Interfaces Order*, the Commission reminded covered entities "that the achievability limitation is applicable to Sections 303(aa)(1) and 303(bb)(1) of the Act." See *Accessible User Interfaces Order*, 28 FCC Rcd at 17380, para. 78. Thus, the achievability provision is not applicable to the requirements in Section 79.109 of the Commission's rules, which were adopted pursuant to Sections 303(aa)(3) and 303(bb)(2) of the Act.

¹⁵ See 47 CFR § 1.3; *infra* Section III.B. In addition, parties may request temporary waivers of the accessible user interfaces rules if they can demonstrate good cause to be granted additional time to come into compliance.

¹⁶ *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Memorandum Opinion and Order, 32 FCC Rcd 1926 (2017) (*Honda Waiver Order*). See also Petition for Limited Waiver of Honda Motor Co., Ltd. Filed on behalf of all its Affiliates and Subsidiaries, MB Docket No. 12-108 (filed Dec. 20, 2016) (Petition). The rear entertainment system functions like a DVD and Blu ray player allowing rear-seated passengers to view video programming inside the vehicle. Based on this description, the Bureau determined that Honda's rear entertainment systems are digital apparatus covered by the Commission's rules. *Honda Waiver Order*, 32 FCC Rcd at 1927, n.11.

¹⁷ See *Honda Waiver Order*, 32 FCC Rcd at 1928, para. 5.

¹⁸ *Id.* at 1929, para. 7.

¹⁹ *Id.* at 1929, para. 6.

²⁰ *Id.*

interest.²¹ The Bureau concluded that a 20-month waiver period was merited to give Honda sufficient time to develop and integrate technology that would make rear entertainment systems in Honda vehicles accessible in accordance with the Commission's user interfaces rules, and emphasized that Honda would be required to comply with all applicable accessibility requirements for any vehicle manufactured after August 20, 2018.²² As a condition of the waiver, the Bureau directed Honda to provide status reports on July 20, 2017 and January 20, 2018 describing its efforts to develop and integrate accessible technology for rear entertainment systems in Honda vehicles.²³

6. Although Honda's waiver petition initially estimated that it would take 20 months to provide the requisite accessibility technology for rear entertainment systems in all subject vehicles,²⁴ in its July 20, 2017 status report, Honda indicated that it would not be able to meet the August 20, 2018 deadline with respect to rear entertainment systems in the Acura MDX.²⁵ Specifically, Honda explained that it had worked with the supplier of rear entertainment systems in Acura MDX vehicles to develop a compliance schedule, and together they "determined that the MDX's hardware is incapable of supporting the software changes necessary to bring the MDX RES [rear entertainment system] into compliance with the [CVAA]."²⁶ Given the obstacles to implementing hardware and software changes to support accessibility on the devices, Honda revised its estimate of the earliest date it could bring the Acura MDX into compliance to Spring 2020, well after expiration of the current waiver.²⁷ In a subsequent *ex parte* meeting with staff from the Media Bureau and Consumer and Governmental Affairs Bureau, Honda elaborated on the technological impediments to compliance with respect to the current generation Acura MDX.²⁸ In particular, Honda explained that the current Acura MDX rear entertainment system hardware does not have the required speed, memory, and human machine interface to allow for audio feedback and, thus, the hardware would have to be redesigned entirely to meet the Commission's accessible user interfaces requirements.²⁹

7. Given Honda's contention that it would not be able to meet the August 20, 2018 deadline, the Bureau initiated an investigation into Honda's ability to achieve compliance with the Commission's rules related to the accessibility of user interfaces with regard to rear entertainment systems in Acura MDX vehicles.³⁰ The Bureau directed Honda through a Letter of Inquiry (LOI) to provide information and documentation about Honda's efforts to achieve timely compliance by the deadline with respect to rear entertainment systems in Acura MDX vehicles in order to determine whether it is achievable for

²¹ *See id.*

²² *Id.* at 1930, para. 9.

²³ *Id.* at 1930, para. 10.

²⁴ *See* Petition at 10-11. This Order does not address accessibility of rear entertainment systems in the Honda Pilot or Honda Odyssey, as Honda has committed to complete the necessary technology updates to make user interfaces accessible in these devices by the August 20, 2018 deadline. *See* Honda Motor Co., Ltd. Status Report, MB Docket No. 12-108, at 5-6 (filed July 20, 2017) (July 2017 Status Report); Honda Motor Co., Ltd. January 2018 Status Report, MB Docket No. 12-108, at 8-9 (filed January 20, 2018) (January 2018 Status Report).

²⁵ July 2017 Status Report at 6, 8.

²⁶ *Id.* at 6.

²⁷ *See id.* at 6, 8. *But see* Letter from Chris Laughlin, Counsel for Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary, FCC, at 4-6 (Aug. 22, 2017) (arguing that there is no good cause to support an extension of the waiver for Acura MDX rear entertainments systems).

²⁸ *See* Letter from Andrew Emerson, Porter Wright Morris & Arthur LLP, Attorney for Honda Motor Co., Ltd., to Marlene H. Dortch, Secretary, FCC, Attach. at 9-13 (Aug. 21, 2017) (August 21, 2017 *Ex Parte* Letter).

²⁹ *Id.* at 10.

³⁰ *See* Letter from Martha E. Heller, Chief, Policy Division, Media Bureau, to Andrew Emerson, Porter Wright Morris & Arthur LLP, Attorney for Honda Motor Co., Ltd. (Nov. 28, 2017) (LOI).

Honda to comply with the requirements and whether appropriate enforcement action is warranted.³¹ Honda filed its response to the Bureau's LOI on January 29, 2018.³²

III. DISCUSSION

8. For the reasons set forth below, we grant Honda a waiver of Section 79.107 of the Commission's rules, which requires user interfaces to be accessible to individuals who are blind or visually impaired, on the basis of achievability with respect to the rear entertainment systems in 2017 through 2020 Model Year Acura MDXs. We also find that there is good cause under Section 1.3 of the Commission's rules to grant Honda a permanent waiver of the accessible user interfaces requirements in Section 79.109, which requires a simple and easy to use activation mechanism for closed captioning and video description, with respect to these particular vehicles.

A. Section 79.107 Achievability Waiver

9. We find that it is not achievable for Honda to comply with the Section 79.107 requirements regarding the accessibility of user interfaces with respect to rear entertainment systems in 2017 through 2020 Model Year Acura MDXs because compliance cannot be achieved "with reasonable effort or expense." In accordance with the flexible approach to achievability outlined in the *Accessible User Interfaces Order*, we must evaluate achievability on a case-by-case basis, weighing each of the four statutory factors equally.³³ In evaluating evidence offered to prove that compliance is not achievable, we are informed by the analysis in the *ACS Order*, in which the Commission provided a detailed explanation of each of the four statutory factors.³⁴ We analyze each of those factors as applied to the rear entertainment systems in 2017 through 2020 Model Year Acura MDXs below.

1. Nature and Cost of the Steps Needed to Meet the Requirements with Respect to the Specific Equipment in Question

10. We find that the nature and cost of the steps needed to meet the requirements with respect to the specific equipment in question weigh in favor of a finding that it is not achievable for Honda to comply with the Section 79.107 requirements. In the *ACS Order*, the Commission stated that it would consider all relevant evidence when analyzing the nature and cost of the steps necessary to achieve accessibility for the particular device and for the particular covered entity, including whether accessibility features have been implemented for competing products.³⁵

11. We are persuaded by evidence presented by Honda that bringing the Acura MDX rear entertainment systems into compliance with Section 79.107 of the rules presents substantial and costly technological impediments that adversely affect their achievability. Honda is in the fourth year of its seven-year production cycle for the current generation of Acura MDX, spanning Model Years 2014

³¹ See *id.* at 2-3.

³² See generally Honda LOI Response.

³³ *Accessible User Interfaces Order*, 28 FCC Rcd at 17379, para. 78.

³⁴ See *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14610-19, paras. 127-48 (2011) (*ACS Order*).

³⁵ *ACS Order*, 26 FCC Rcd at 14611, para. 129. In the *ACS Order*, the Commission also found that if inclusion of an accessibility feature in a product results in a fundamental alteration of that product, then it is *per se* not achievable to include that accessibility feature. *Id.* at 14610, para. 128. A "fundamental alteration" is one that reduces substantially the functionality of the product, renders some features inoperable, impedes substantially or deters use of the product by individuals without the specific disability the feature is designed to address, or alters substantially and materially the shape, size, or weight of the product. *Id.* Because we do not believe the changes described by Honda to achieve accessibility would fundamentally alter the device, we do not make a *per se* finding of whether compliance with Section 79.107 is not achievable.

through 2020, which is slated to expire in October 2020.³⁶ The research and development process for the current production cycle began in 2009.³⁷ That same year, Honda commenced the design process for rear entertainment systems to be installed in the Acura MDX, and it completed the core software design and hardware design for these systems by 2012.³⁸ As Honda explains, both the software and hardware design are unable to be altered readily after this point in the design and production cycle.³⁹

12. Upon learning of the accessibility requirements applicable to digital apparatus, Honda began steps to retrofit the rear entertainment systems to make them compliant with the Commission's rules. Honda's initial efforts to update accessibility on the Acura MDX rear entertainment systems included engaging in numerous internal meetings at different management levels to develop technical specifications for compliance; retaining outside legal counsel for advisement on compliance; retaining an outside consultant with expertise on accessibility compliance; engaging in a review of competitor automobile models to determine accessibility solutions that have been identified; engaging in meetings with its supplier to explain accessibility requirements and provide detailed technical specifications of changes needed to bring the rear entertainment systems into compliance with such requirements; and engaging in meetings with a possible alternative supplier for the rear entertainment systems.⁴⁰

13. After engaging in these first implementation steps, Honda learned from its supplier that bringing the rear entertainment systems into compliance by the expiration of the waiver would pose substantial technological obstacles.⁴¹ In particular, a June 2017 report from Honda's supplier detailed numerous technical concerns about the ability to retrofit the rear entertainment systems based on the system's design.⁴² As Honda explains, "the current RES hardware does not have the required speed, memory, or human machine interfaces (HMI) to meet the [CVAA's] accessibility requirements," and, thus, the printed circuit board hardware for the systems would have to be redesigned.⁴³ First, with respect to microprocessing speed, Honda contends that the current system in the Acura MDX runs at 32 MIPS (million instructions per second), but in order to bring the system into compliance with text-to-speech capability, the supplier would need to create a design for and integrate an entirely new microprocessor that can operate at 65+ MIPS.⁴⁴ Second, in order to bring the system into compliance, Honda asserts that the new microprocessor would require new memory chips to double its RAM (random access memory) from 1 megabyte to 2 megabytes and increase its ROM (read-only memory) from 60 kilobytes to 5 megabytes, which is an 83 times increase in storage.⁴⁵ Third, Honda maintains that the supplier would need to reevaluate its human machine interfaces to accommodate cursor movements over on-screen text fields, in addition to integrating the new microprocessor and equipping it with sufficient memory.⁴⁶

14. Based on the information provided by Honda about the nature and costs of the steps, as well as the amount of time needed to meet the requirements with respect to the Acura MDX rear

³⁶ See Honda LOI Response at 20, 22.

³⁷ *Id.* at 20.

³⁸ *Id.* at 3.

³⁹ *Id.*

⁴⁰ *Id.* at 4-6.

⁴¹ *Id.* at 15-18.

⁴² *Id.* at 8.

⁴³ *Id.* at 16.

⁴⁴ *Id.* at 16-17. Honda indicates that its supplier does not currently have such a processor for a rear entertainment system. *Id.* at 17.

⁴⁵ *Id.* at 17.

⁴⁶ *Id.*

entertainment systems, we believe that compliance with Section 79.107 of the CVAA's user interface requirements cannot be achieved with reasonable effort and expense. According to Honda, the estimated cost for executing these technological changes is \$11.4 million and the estimated time for completion is 33 months.⁴⁷ Honda would not be able to comply until 2020, when production on the current generation Acura MDX is scheduled to expire.⁴⁸ Thus, even if Honda were to expend \$11.4 million, the technology would be integrated into Acura MDX vehicles for a few short months before being rendered obsolete by an entirely new rear entertainment system that Honda reports has been designed to be fully compliant with the Commission's accessible user interfaces rules.⁴⁹

15. The *ACS Order* indicates that the Commission should also consider whether accessibility features have been implemented for competing products as evidence of whether implementation of accessibility features in the subject device is achievable.⁵⁰ However, such evidence may be rebutted by demonstrating that the circumstances of the particular device offered by the covered entity render the accessibility features not achievable.⁵¹ Although Honda has developed a compliance plan for accessible user interfaces with respect to the Honda Pilot and Odyssey, Honda explained that it is infeasible to "swap out" the rear entertainment systems used in the Honda Pilot and Odyssey for the Acura MDX because the communications networks and systems are entirely different and the vehicle would have to go through extensive automotive grade re-validation testing.⁵² For this reason, it would not be technically feasible for Honda to replace its rear entertainment systems with those manufactured by an alternative third-party supplier. Thus, even though accessibility features have been implemented for other rear entertainment systems, we find that the circumstances of the particular device installed in Acura MDX vehicles render the accessibility features not achievable.

2. Technical and Economic Impact on the Operation of the Manufacturer and on the Operation of the Specific Equipment in Question

16. We find that the technical and economic impact on the operation of the manufacturer and on the operation of the specific equipment in question also weigh in favor of a finding that it is not achievable for Honda to comply with the Section 79.107 requirements. In the *ACS Order*, the Commission explained that it would consider both the costs of making a product accessible and an entity's total gross revenues.⁵³ The Commission also stated that it would consider the cost of accessibility relative to the cost of producing a product, including whether the nature and cost of the steps needed to achieve accessibility would have a substantial negative technical or economic impact on the ability to produce a product.⁵⁴

17. As noted above, Honda estimates that the cost for executing the technological changes needed to retrofit the rear entertainment systems for compliance with the accessible user interfaces rules is \$11.4 million and that the time for completion is 33 months.⁵⁵ Honda reports that it would not be able to comply with the rules until 2020 at the earliest, and that production on the current generation Acura

⁴⁷ *Id.* at 14.

⁴⁸ *Id.*

⁴⁹ *Id.* at 15.

⁵⁰ *ACS Order*, 26 FCC Rcd at 14611, para. 129.

⁵¹ *Id.*

⁵² See August 21, 2017 *Ex Parte* Letter, Attach. at 9, 12; Honda LOI Response at 18. The record does not provide specific information describing the accessibility solutions for rear entertainment systems on competitor vehicles.

⁵³ *ACS Order*, 26 FCC Rcd at 14612, para. 132.

⁵⁴ *Id.* at 14613, para. 134.

⁵⁵ Honda LOI Response at 14.

MDX is scheduled to expire in October 2020.⁵⁶ Assuming Honda were able to comply starting in May 2020, that would result in the manufacture of vehicles with retrofitted rear entertainment systems for five months until the new Model Year 2021 Acura MDX (which has been designed to be fully compliant with the accessible user interfaces rules) begins production.⁵⁷ Based on previous sales data, Honda estimates that 500 Acura MDX vehicles with rear entertainment systems will be sold each month between May and October 2020, which amounts to an estimated total of 2,500 vehicles sold during this time period.⁵⁸ Dividing the total cost to retrofit the rear entertainment systems for compliance with the accessible user interfaces rules by the number of vehicles expected to be sold between May 2020 and October 2020, the cost equals roughly \$4,560 per vehicle.⁵⁹ According to Honda, this amount per vehicle “proves prohibitively expensive for Honda to pursue retrofitting the RES.”⁶⁰

18. We find that the costs of implementing the required accessibility would have a substantial negative impact on the ability of Honda to continue offering rear entertainment systems in the current generation Acura MDX. Honda asserts that “in light of the technical hurdles identified by Honda and [its supplier] during the implementation process, the stall in implementation schedule that now pushes even the possibility of compliance beyond this generation’s manufacturing cycle, and the prohibitively expensive estimate to achieve possible compliance with the Act, Honda has concluded that the only viable option . . . is to completely remove the RES from the MDX.”⁶¹ Because the alternative is “prohibitively complex and financially draining,” Honda would opt to remove rear entertainment systems from current generation Acura MDX vehicles when the current waiver expires, which would deny all passengers the benefits of viewing video programming in these vehicles.⁶²

3. Type of Operations of the Manufacturer

19. Applying the third factor of our waiver analysis, we find that the type of operations of the manufacturer weighs in favor of a finding that it is not achievable for Honda to comply with the Section 79.107 requirements. In the *ACS Order*, the Commission clarified that it will take into consideration whether a covered entity has experience in the advanced communications services market or related markets, such as telecommunications and information technology markets, when conducting an achievability analysis.⁶³

20. That Honda does not have experience in communications or related markets, and is not a manufacturer of consumer electronics equipment typically subject to the Commission’s apparatus rules, is a factor that we may consider in our determination as to whether it is achievable for Honda to comply. Honda is an automobile manufacturer headquartered in Tokyo, Japan, with U.S. subsidiaries engaging in sales, research and development, and manufacturing operations in a number of states.⁶⁴ Honda also observes that, as an automaker, it has not historically been subject to the Commission’s regulations.⁶⁵

21. The Commission may also consider the size of a company in determining whether an

⁵⁶ *Id.*

⁵⁷ *Id.* at 15, 22.

⁵⁸ *Id.* at 22.

⁵⁹ *Id.* at 22-23.

⁶⁰ *Id.* at 23.

⁶¹ *Id.* at 15. *See also* January 2018 Status Report at 9-10.

⁶² Honda LOI Response at 22.

⁶³ *ACS Order*, 26 FCC Rcd at 14614-15, para. 137. The Commission further stated that it would give little weight to whether a new entrant has experience in other unrelated markets. *Id.* at 14615, para. 138.

⁶⁴ *Honda Waiver Order*, 32 FCC Rcd at 1927, para. 3.

⁶⁵ Honda LOI Response at 20.

accessibility feature is achievable, because, as explained in the *ACS Order*, a small start-up company might need more time to develop its resources and learn the accessibility requirements than would a larger one.⁶⁶ However, that order also made clear that “a company’s size alone is not a proxy for determining whether accessibility can be achieved,” and “the existence of substantial financial resources does not, by itself, trigger a finding of achievability.”⁶⁷

22. In addition, there are unique aspects of the automobile manufacturing industry which support an achievability waiver in this case. Honda explains that the manufacturing cycle for automobiles “is lengthy and complex,” and the production cycle for a generation of Honda vehicles in particular spans seven years, which is the industry average.⁶⁸ Because models within a generation do not substantively change from year to year, an automobile’s design is typically frozen years in advance of a given model year’s production.⁶⁹ In the case of the Acura MDX, Honda states that the research and development process for the current production cycle, which spans Model Years 2014 through 2020, began in 2009.⁷⁰ In 2009, Honda met with its supplier to discuss design options for the rear entertainment systems in Model Year 2014 to 2020 Acura MDXs, and, by 2012, Honda’s engineering department had completed the core software design of the rear entertainment systems, as well as the hardware design.⁷¹ Honda explains that once the core software design of these devices is completed, the design is frozen and no new features can be added to the system’s software.⁷² Similarly, once the hardware design and validation is completed, the design is frozen and unable to be altered after this point in the production cycle.⁷³ Given the lengthy design and production cycle for Honda automobiles, the technical design of the rear entertainment systems for current generation Acura MDX was initiated before the CVAA was enacted and was completed before the Commission adopted its accessible user interfaces rules.

23. We believe the multi-year lapse in time between the design and development of the Acura MDX rear entertainment systems and the present explains why parts of these systems, including the microprocessing speed, memory, and software, cannot be easily retrofitted to provide the audio functionality needed to comply with the Commission’s accessible user interfaces rules. Because Honda is not updating the technology in its rear entertainment systems as it releases new model year vehicles in the current generation of the Acura MDX, we believe this distinguishes Honda from manufacturers of digital apparatus, which typically and regularly develop new technologies and offer expanded features and functions in new model devices. Further, Honda is reliant on an outside supplier for rear entertainment systems, which places some of the ability to make technological changes to the systems out of Honda’s control.⁷⁴

4. Extent to Which the Manufacturer Offers Accessible Equipment Containing Varying Degrees of Functionality and Features at Differing Price Points

24. The last factor we must consider with respect to achievability under Section 79.107 is the extent to which a manufacturer offers accessible services or equipment containing varying degrees of functionality and features that are offered at differing price points. In the *ACS Order*, the Commission

⁶⁶ *ACS Order*, 26 FCC Rcd at 14615-16, para. 139.

⁶⁷ *Id.*

⁶⁸ Honda LOI Response at 2, 20.

⁶⁹ *Id.* at 20.

⁷⁰ *Id.*

⁷¹ *Id.* at 3.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 19.

explained that covered entities generally need not consider what is achievable with respect to every product, if the entity offers consumers with disabilities meaningful choices within a line of products that includes the full range of functionality and prices for that line of products.⁷⁵ As the Commission stated, “if a line of products includes low-end products, it is just as important that low-end products and services be accessible as high-end products and services if achievable.”⁷⁶ We believe that the fourth achievability factor is inapplicable in the instant situation because the rear entertainment system that is at issue (and for which, for the reasons enumerated above, it is not achievable to provide accessibility) was designed and validated for installation in *all* Acura MDX models manufactured from 2017 to 2020. Thus, there is no product line of other Acura MDX models with accessible rear entertainment systems containing varying degrees of functionality and features and differing price points from which consumers can choose.

5. Conclusion

25. As noted above, the Commission must weigh each of the four statutory factors equally when it evaluates achievability on a case-by-case basis.⁷⁷ Because the first three statutory factors weigh in favor of a finding that it is not achievable for Honda to comply with the accessible user interfaces requirements in Section 79.107 of the Commission’s rules with respect to the rear entertainment systems in 2017 through 2020 Model Year Acura MDXs, and we find the fourth statutory factor to be inapplicable, we find that an achievability waiver is warranted in this instance.

B. Section 79.109 Waiver

26. We also find that there is good cause to grant Honda a waiver of the accessible user interfaces requirements in Section 79.109 of the Commission’s rules with respect to the rear entertainment systems in 2017 through 2020 Model Year Acura MDXs. We evaluate whether a waiver is warranted pursuant to the general waiver authority in Section 1.3 of the Commission’s rules.⁷⁸ To waive a requirement for good cause, we must (1) explain why deviating from the general requirement serves the public interest, and (2) explain the nature of the special circumstances.⁷⁹

27. We believe that there are special circumstances in this case that support deviating from the general requirement to make built-in closed captioning and video description activation accessible through a mechanism that is reasonably comparable to a button, key, or icon.⁸⁰ As described in detail above, Honda claims that it would need to expend 33 months and \$11.4 million to complete the implementation steps necessary to retrofit rear entertainment systems in the Acura MDX to make them compliant with the accessible user interfaces rules—a cost which averages \$4,560 per vehicle produced.⁸¹ By the time Honda would be able to complete the implementation steps in October of 2020 or later, it would be the end of the seven-year production cycle for the current generation Acura MDX, which is

⁷⁵ *ACS Order*, 26 FCC Rcd at 14617-18, paras. 142, 144.

⁷⁶ *Id.* at 14617-18, para. 144.

⁷⁷ *Accessible User Interfaces Order*, 28 FCC Rcd at 17379, para. 78.

⁷⁸ 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”). The Commission generally delegated authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider waiver requests of the rules adopted in the *Accessible User Interfaces Order*. *Accessible User Interfaces Order*, 28 FCC Rcd at 17423, para. 165. See 47 CFR §§ 0.61, 0.283, and 1.3.

⁷⁹ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁸⁰ 47 CFR §§ 79.109(a)(1)-(2).

⁸¹ See *supra* Sections III.A.1-2.

slated to go out of production that same month.⁸² The next generation of Acura MDX will be manufactured starting in October 2020 with the Model Year 2021 Acura MDX, and Honda states that this generation of vehicles will utilize a different rear entertainment system that will be fully compliant with the Commission's accessible user interfaces requirements.⁸³ Thus, even if Honda were to expend the time and financial resources to overhaul the current generation Acura MDX rear entertainment systems, this technology would not be utilized in future Honda vehicles.⁸⁴

28. We find that Honda's waiver is in the public interest because the alternative would be the removal of rear entertainment systems from current generation Acura MDX vehicles when the current waiver expires, which would be detrimental to consumers. Honda states that "in light of the technical hurdles identified by Honda and [its supplier] during the implementation process, the stall in implementation schedule that now pushes even the possibility of compliance beyond this generation's manufacturing cycle, and the prohibitively expensive estimate to achieve possible compliance with the Act, Honda has concluded that the only viable option . . . is to completely remove the RES from the MDX."⁸⁵ This alternative would deny all passengers the benefits of viewing video programming in Acura MDX vehicles through an installed rear entertainment system. Honda has explored other options such as replacing rear entertainment systems with those manufactured by another supplier or creating a dummy screen for the rear entertainment systems with limited functionality, but has found that these options are not workable solutions.⁸⁶

29. Further, the number of Acura MDX vehicles equipped with entertainment systems is relatively small compared to the total number of such vehicles sold, and this number has been declining.⁸⁷ Sales data provided by Honda shows a gradual decline in the number of Acura MDX vehicles sold with a rear entertainment system installed.⁸⁸ For example, Honda sold 1,053 Acura MDX vehicles with a rear entertainment system (out of 5,551 total MDX sales) at the start of the production cycle in July 2013, compared with 285 Acura MDX vehicles with a rear entertainment system (out of 5,084 total MDX sales) sold in October 2017.⁸⁹ Honda expects that the number will continue to decline.⁹⁰

⁸² Honda LOI Response at 14-15. Honda clarifies that October 2020 would be the estimate for completion if it "picked up" the implementation steps in February 2018. *Id.* at 14.

⁸³ *Id.* at 15.

⁸⁴ *Id.*

⁸⁵ *Id.* See also January 2018 Status Report at 9-10.

⁸⁶ See Honda LOI Response at 9, 18-19; August 21, 2017 *Ex Parte* Letter, Attach. at 12-13. For example, Honda explains that Acura MDX vehicles would have to go through extensive automotive grade revalidation if Honda integrated a different rear entertainment system, including environmental, electromagnetic, electrical, mechanical, and durability testing. See August 21, 2017 *Ex Parte* Letter, Attach. at 12. Honda also explored creating a dummy screen on the rear entertainment system that would limit the functionality of the system to basic auxiliary and video capabilities. See Honda LOI Response at 18. However, Honda found that "this countermeasure did not accomplish compliance with the Act and was flawed in many ways that would have negatively impacted all users of the RES, as the limited accessibility functionality it might have accomplished caused core problems with the system's working functionality." *Id.*

⁸⁷ See Honda LOI Response at 20-21.

⁸⁸ *Id.*

⁸⁹ *Id.* at 21-22 ("[I]n the year 2013, the total number of MDXs with RES sold represented 17.2% of the year's total vehicle sales. By 2017, that number had dropped to only 9.6%.")

⁹⁰ *Id.* at 22.

30. For the aforementioned reasons, we find good cause to grant Honda a waiver of the accessible user interfaces requirements in Section 79.109 of the Commission's rules with respect to the rear entertainment systems in 2017 through 2020 Model Year Acura MDXs.

IV. ORDERING CLAUSES

31. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in Sections 4(i), 4(j), 303(aa), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(aa), and 617(g), and Sections 0.61, 0.283, 1.3, and 79.107(c) of the Commission's rules, 47 CFR §§ 0.61, 0.283, 1.3, and 79.107(c), this Memorandum Opinion and Order IS ADOPTED.

32. **IT IS FURTHER ORDERED** that a waiver of Sections 79.107 and 79.109 of the Commission's rules, 47 CFR §§ 79.107, 79.109, IS GRANTED to Honda Motor Co., Ltd. with respect to the rear entertainment systems in 2017 through 2020 Model Year Acura MDXs.

33. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau